

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re applications of) MM Docket No. 93-75
Trinity Broadcasting of Florida, Inc.)
for Renewal of License of Station) File No. BRCT-911001LY
WHFT-TV, Miami, Florida)
Glendale Broadcasting Company)
for a Construction Permit for a New) File No. BPCT-911227KE
Commercial Television to Operate on)
Channel 45, Miami, Florida)
To The Commission

RECEIVED

OCT 25 1996

OPPOSITION TO MOTION TO VACATE THE RECORD

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Spanish American League Against Discrimination ("SALAD") respectfully opposes the "Motion to Vacate the Record on Improvidently Designated Issues" filed August 20, 1996 by Trinity Broadcasting of Florida, Inc. ("Trinity").

The Opposition being filed today by Glendale Broadcasting Company ("Glendale") accurately states the facts and law. SALAD can add little to Glendale's outstanding pleading other than its endorsement, which it is happy to provide.

The law is often advanced by controversial filings which push the envelope of substantive argumentation. Sometimes, for example, the policies underlying decades-old hornbook law are wrong and the law should change. Consequently, lawyers must occasionally take positions which are utterly without precedential support. Such advocacy is very common in the public interest world. Communications law has thrived because the Commission has not chilled such advocacy. See, e.g., Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966).

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That is why SALAD does not want to discourage filings such as Trinity's.^{1/}

Nonetheless, Trinity's motion has absolutely no substantive merit, for the reasons given in Glendale's Opposition. Trinity's motion is merely a reargument of the same contention Trinity has repeatedly pressed without success. Nor has Trinity shown how public policy would be advanced by a change in the law to encourage the formation of minority front companies, to encourage misrepresentations, and to encourage abuses of the Commission's processes.

Trinity's key piece of "newly discovered evidence" could have been "discovered" years ago. A transcript of a 1984 public Commission meeting is not newly discovered "evidence but, rather, evidence easily discoverable initially, and apparently only now deemed crucial by appellant when seen from the highland of hindsight." Guinan v. FCC, 297 F.2d 782, 787 (D.C. Cir. 1961).

The Commission does not look favorably on "new" evidence that's not new at all. WEBR, Inc. v. FCC, 420 F.2d 158 (D.C. Cir. 1969); S. Derrickson Moore, 47 RR2d 384, 386 ¶7 (1980). As the D.C. Circuit declared when the FCC was new:

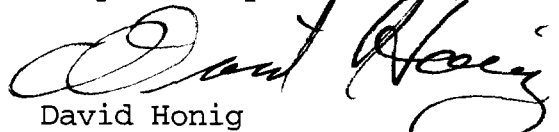
We cannot allow [a party] to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.

Colorado Radio Corp. v. FCC, 118 F.2d 24, 26 (D.C. Cir. 1941).

^{1/} However, it is rather annoying to have to waste time responding to a bulky, meritless filing based on eleven-year old evidence submitted five years late without a word of explanation.

The Commission should not consider Alan Glasser's Declaration. The Declaration Mr. Glasser provided in Fox Television Stations, Inc. (MO&O), 10 FCC Rcd 8452 (1995) (subsequent history omitted) was proper because the Commission had issued an order to "waive our rules to permit current and former Commission personnel to make statements to private parties concerning certain matters at issue in this proceeding." Fox Television Stations, Inc. (Order), 10 FCC Rcd 2225 (1995); see also Telestar, Inc., 4 FCC Rcd 4065, 4066 n. 9 (1989). The rule against disclosure of non-public information, 47 CFR §19.735-206, "on its face refers only to current personnel. However, FCC Directive FCC INST 1113.4 also requires departing Commission personnel to execute a confidentiality pledge." Fox Television Stations, Inc. (Order), 10 FCC Rcd at 2246 n. 1. Trinity did not ask the Commission for a waiver of FCC INST 1113.4, and the Commission did not waive FCC INST 1113.4 as it did in the Fox case. Consequently, the Commission may not consider Mr. Glasser's declaration.^{2/}

Respectfully submitted,



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October 25, 1996

^{2/} Trinity was disqualified many times over by the ALJ's disposition of the issues in this case. If the Commission affirms, there would be no need to consider whether it was improper for Trinity to procure a declaration from Mr. Glasser.

CERTIFICATE OF SERVICE

I, David Honig, this 25th day of October, 1996, hereby certify that I have caused to be delivered to the following persons by U.S. First Class Mail, postage prepaid, the foregoing "Opposition to Motion to Vacate the Record":

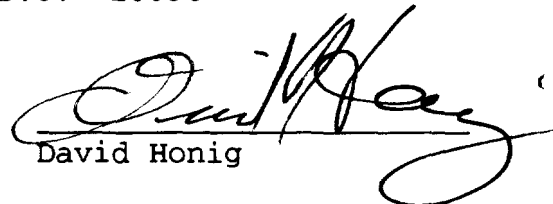
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